

**After Recording Return to:**

City of Frisco  
City Secretary  
6101 Frisco Square Boulevard, 5<sup>th</sup> Floor  
Frisco, Texas 75034

**DEVELOPMENT AGREEMENT  
(Pre-Development Grading)  
NW Corner of Dallas North Tollway and Stonebrook Parkway**

**THIS DEVELOPMENT AGREEMENT** (this "Agreement"), dated as of \_\_\_\_\_, 2008 (the "date of the Agreement"), is made and entered into by and between the City of Frisco, Texas, a Texas municipal corporation ("Frisco and/or City"), and Texas Univest – Frisco, Ltd., a Texas limited partnership ("Developer").

**WHEREAS**, Developer is the sole owner of that certain tract of land situated in the City of Frisco, Collin County, Texas, containing approximately 9.9805 acres, as more particularly described and depicted on **Exhibit "A,"** attached hereto and incorporated herein for all purposes (the "Property"); and

**WHEREAS**, Frisco has investigated and determined that it would be advantageous and beneficial to Frisco and its citizens to obtain Developer's commitment to; bury electric utility lines on the Property, provide future right-of-way dedication, provide tree mitigation, and remove certain land uses within Planned Development District 112 ("PD112") as provided herein; and

**WHEREAS**, Developer desires to submit for and receive a grading permit for the Property prior to submitting to Frisco development plans, including but not limited to preliminary site plan, final site plan, final plat, civil drawings, landscape plan and façade plan. Such request is being made in order to allow Developer to fulfill its obligations and exercise its rights under that certain United States Corp of Engineers Nationwide Permit Number 9 for Project Number SWF-2007-45 under Permit Application Number 199800370 related to the mitigation of certain creeks and drainage ways on the Property as more particularly described on **Exhibit "B,"** attached hereto and incorporated herein for all purposes ("USCE Permit"); and

**WHEREAS**, Developer and Frisco agree that Developer may fulfill its obligations in the manner set forth herein.

**NOW, THEREFORE**, in consideration of the covenants and conditions contained in this Agreement, Frisco and Developer agree as follows:

1. **Recitals Incorporated.** All of the above recitals are hereby found to be true and correct and are hereby approved and incorporated into the body of this Agreement as if copied in their entirety.

2. **Land Subject to Agreement.** The land that is subject to this Agreement is that defined as the Property above. Developer hereby declares that it is the sole owner of the Property and is authorized to bind such Property, themselves, any creditors or lien holders, and any successors and/or assigns under the terms of this Agreement.

3. **Obligations of Developer.**

- a. **Undergrounding of Electrical Utilities** – At the time of development of the Property Developer shall, in conformance with all Frisco, State, Federal and electric utility company regulations, rules, procedures and ordinances, take all actions necessary to bury any and all electric utility lines then in existence on the Property. Developer is further obligated to bury any additional lines that may be required to serve the Property as a result of development of the Property. This provision includes Developer's obligation to fund all cost of burial of such electric utility lines.; and
- b. **Rights-of-Way Dedication** - Developer will dedicate at no cost to the Frisco the following rights-of-way, and easements required for completion of the construction of road improvements, as well as for signalization, and stormwater improvements; with said dedications and easements to be made in a form solely approved by Frisco upon thirty (30) days written request from Frisco:
  - i. Provide an additional ten feet (10') of right-of-way along Property's southern frontage on Stonebrook Parkway ("Stonebrook ROW") for construction of a travel lane. The extent of such Stonebrook ROW will be seventy-five feet (75') as measured from the centerline of Stonebrook Parkway for two hundred feet (200') from the Dallas North Tollway ("DNT") right-of-way and transition for the next one hundred fifty feet (150') to sixty feet (60') as measured from the center line of Stonebrook Parkway. Right-of-way contemplated by this section is for the main travel lane with construction of such to be funded by Frisco and does not satisfy Developer's requirement to provide for a deceleration lane street easement at the time of development of the Property. If any portion of this Property is developed with access on Stonebrook Parkway prior to Frisco building the main travel lane, Developer, shall build the deceleration lane adjacent to the existing travel lane at Developer's expense. The City will reconstruct the deceleration with the construction of the main travel lane. Reconstruction of the deceleration lane will be at the Frisco's expense. If the deceleration lane is initially constructed at the same time as the main travel lane, Developer is responsible for the construction cost of the deceleration lane.
  - ii. Provide an additional ten feet (10') of right-of-way along Property's eastern frontage on Dallas Parkway ("Dallas ROW") for construction of a right turn lane from Dallas Parkway southbound onto Stonebrook Parkway westbound. The extent of such Dallas ROW will be a length of two

hundred feet (200') for stacking, measured northward beginning from the intersection of Dallas Parkway and Stonebrook Parkway after applying the dimensions of the right-of-way required in Section 3.b.i. above to such intersection. The ten feet (10') of additional right-of-way shall then transition to zero feet (0') over the next one hundred fifty feet (150') northward. Right-of-way contemplated by this section is for a right turn lane with construction of such to be funded by Frisco and does not satisfy Developers requirement to provide for a deceleration lane street easement at the time of development of the Property.; and

- iii. Provide a corner clip at the intersection, after such intersection is revised as part of the requirements of Section 3.b.i. and ii. above, of Dallas Parkway and Stonebrook Parkway with such clip being forty feet (40') by forty feet (40') on each side of the triangular clip being measured from the revised intersection Property corner.
- c. Tree Mitigation – In accordance with Frisco's Zoning Ordinance, as it currently exists or may be amended in the future, the only trees to be removed from the Property are those that have been identified on the Preliminary Grading Plan, which is particularly described and depicted on **Exhibit "C,"** attached hereto and incorporated herein for all purposes ("Preliminary Grading Plan"). Based on a review of the Preliminary Grading Plan it is hereby agreed between the parties that the total mitigation fee to be paid to Frisco concurrent with final execution of this Agreement is seventy-eight thousand eight hundred thirty-seven and 50/100 (\$78,837.50). Payment of such mitigation fee shall be made prior to issuance of a Grading Permit.
- d. Modification of Allowed Uses within PD112 – Developer consents to and shall provide full support of a city-initiated rezoning of the Property that prohibits the following uses:
  - i. Apparel Distribution Centers
  - ii. Auto Laundries/Car Wash Facilities
  - iii. Automobile Parking Lots and Parking Garages
  - iv. Automobile Sales, Service and Leasing – New and Used
  - v. Billboard and Advertising Signs
  - vi. Commercial Amusement Enterprises (outdoor)
  - vii. Distribution Centers and Showrooms
  - viii. Food Product Distribution Centers
  - ix. Newspaper Printing Centers
  - x. Office Showroom Facilities
  - xi. Radio and Television Studios and Broadcasting Facilities
  - xii. Service Stations (full service)
  - xiii. Small Machinery Sales and Service
  - xiv. Small Truck Sales and Leasing
  - xv. Storage Facilities (incidental to the primary, permitted uses)

This zoning change may be initiated at the City's own convenience. Both parties agree that this provision does not obligate Frisco City Council to rezone the Property nor does it dictate when the zoning change application has to be initiated by city staff.

- e. Grading Permit Necessary. Developer shall obtain a Grading Permit from the City before performing any work on the Property. To apply for a Grading Permit from the City, the Developer shall submit the following to the City for review:
  - i. grading plans;
  - ii. a storm water pollution prevention plan;
  - iii. a post grading erosion control plan; and
  - iv. any other documents the City Manager, or his designee, deems reasonably necessary.
- f. Compliance with plans. Developer, after receiving a Grading Permit from Frisco, shall grade the entire Property, including filling of the creek and construction of an interim ditch from the culvert at Stonebrook Parkway to the outfall at the northern Property line. Such grading shall be completed in accordance with the grading plans, storm water pollution prevention plan, and post grading erosion control plan approved by the City for the Property.
- g. Implementation of Post Grading Erosion Control Plan. Developer shall implement and maintain the post grading erosion control plan so long as any portion of the Property remains undeveloped.

4. Obligations of Frisco. Frisco shall issue a Grading Permit no later than December 1, 2008 if:

- a. the Developer submits all required documentation, applications, and plans specified in 3e of this Agreement, in the proper form no later than October 31, 2008; and
- b. the City reasonably determines that such documentation, applications, and plans comply with all Frisco, state and federal rules and regulations.; and
- c. Should the City fail to issue to the Developer such Grading Permit on or before December 1, 2008, then this Agreement shall be deemed null and void, at the option of the Developer, including, without limitation the obligations of the Developer under Section 3 of the Agreement, which shall be terminated, be null and void, and of no effect.

5. Default of Developer. If Developer fails to comply with the provisions of this Agreement, the Developer will be considered in default. Upon Frisco giving written notice of the default to the Developer and failure of the Developer to cure such default within thirty (30) days of receipt of such notice, Frisco shall have all of the rights and remedies allowed for under the law, including the following remedies:

- a. to refuse to issue building permits for the Property; and/or
- b. to refuse to issue a certificate of occupancy for any building on the Property; and/or
- c. to file this instrument in the Land Records of Collin County as a lien and/or encumbrance on the Property; and/or
- d. to refuse to accept any portion of any of the grading improvements on the Property; and/or
- e. to seek specific enforcement of this Agreement.

6. **City's Additional Remedies.** In addition to any other remedy available to Frisco, if Developer files a lawsuit against the City, this Agreement is null and void as of the date of filing the lawsuit.

7. **Default of City.** In the event Frisco fails to comply with the terms and conditions of this Agreement, Developer may seek specific enforcement of this Agreement as its sole and exclusive remedy.

8. **Limitation of Liability.** Notwithstanding anything to the contrary herein, the parties agree and acknowledge that Frisco shall not, under any circumstance, be required to tender, and/or be liable to Developer for, any reimbursement of and/or payment of any monies with regard to the matters set forth herein.

9. **Covenant Running with the Land.** This Agreement shall be a covenant running with the land and the Property and shall be binding upon the Developer, its officers, directors, partners, employees, representatives, agents, successors, assignees, vendors, grantees and/or trustees. In addition, the parties shall cause this Agreement to be filed in the Land Records of Collin County, Texas.

10. **Limitations of Agreement.** The parties hereto acknowledge that this Agreement is limited to burial of electric utility lines on the Property, future right-of-way dedication, tree mitigation, and removal of certain land uses within PD112 as each is described herein. Frisco ordinances covering property taxes, utility rates, permit fees, inspection fees, development fees, thoroughfare, sewer and water impact fees, tap fees, pro-rata fees and the like are not affected by this Agreement. This Agreement does not waive or limit any of the obligations of Developer to Frisco under any ordinance, whether now existing or in the future arising. Further, this Agreement does not alter or waive any obligations of Developer or Frisco under any existing agreements between the parties that may exist as of the date of this Agreement.

11. **Notices.** Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such party via facsimile or a hand-delivery service, Federal

Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the parties shall be as follows:

If to Frisco:

City of Frisco  
City Manager  
6101 Frisco Square Boulevard, 5<sup>th</sup> Floor  
Frisco, Texas 75034  
Telephone: (972) 292-5100  
Facsimile: (972) 292-5122

With a copy to:

Abernathy, Roeder, Boyd & Joplin, P.C.  
Attention: Richard Abernathy  
1700 Redbud Blvd., Suite 300  
McKinney, Texas 75069  
Telephone: (214) 544-4000  
Facsimile: (214) 544-4040

If to Developer:

Texas Uninvest  
11990 San Vicente Blvd. #200  
Los Angeles, CA 90049  
Telephone: (310) 806-9800  
Facsimile: (310) 806-9801

With a copy to:

Albert S. Weycer  
Wycer, Kaplan, Pulaski and Zuber  
11 Greenway Pl., Ste 1400  
Houston, Texas 77046-1104  
Telephone: (713) 961-9045  
Facsimile: (713) 961-5341

**12. INDEMNIFICATION. DEVELOPER, ON BEHALF OF ITSELF, ITS OFFICERS, DIRECTORS, PARTNERS, CONTRACTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNEES, VENDORS, GRANTEES AND/OR TRUSTEES, DOES HEREBY AGREE TO RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES FROM AND AGAINST ALL DAMAGES, INJURIES (INCLUDING DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (INCLUDING ATTORNEY'S FEES AND EXPENSES INCURRED IN ENFORCING THIS INDEMNITY), CAUSED BY THE NEGLIGENT, GROSSLY NEGLIGENT, AND/OR INTENTIONAL ACT AND/OR**

OMISSION OF THE APPLICABLE DEVELOPER, ITS OFFICERS, DIRECTORS, PARTNERS, CONTRACTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNEES, VENDORS, GRANTEES, TRUSTEES, SUBCONTRACTORS, LICENSEES, INVITEES OR ANY OTHER THIRD PARTIES FOR WHOM SUCH DEVELOPER IS LEGALLY RESPONSIBLE, IN ITS/THEIR PERFORMANCE OF THIS AGREEMENT, IN WHOLE OR IN PART, REGARDLESS OF THE JOINT OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY OF CITY (HEREINAFTER "CLAIMS"). THIS INDEMNIFICATION PROVISION AND THE USE OF THE TERM "CLAIMS" IS ALSO SPECIFICALLY INTENDED TO APPLY TO, BUT NOT LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST CITY BY ANY GOVERNMENT AUTHORITY OR AGENCY BASED ON ANY FEDERAL IMMIGRATION LAW IF SUCH CLAIM RELATES TO A PERSON PROVIDING SERVICES UNDER THIS AGREEMENT PURSUANT TO AN EMPLOYMENT OR CONTRACTUAL RELATIONSHIP WITH DEVELOPER; AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN DEVELOPER, AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR EMPLOYEE'S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH THE DEVELOPER, INCLUDING BUT NOT LIMITED TO, ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS' COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE. IN THIS CONNECTION, DEVELOPER, ON BEHALF OF ITSELF, ITS OFFICERS, DIRECTORS, PARTNERS, CONTRACTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNEES, VENDORS, GRANTEES AND/OR TRUSTEES, AGREES TO RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY, ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES, FOR CITY'S, ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND/OR EMPLOYEES, OWN NEGLIGENCE, IN WHATEVER FORM, ARISING OUT OF ANY ACT OR OMISSION, TAKEN OR FAILED TO BE TAKEN BY THE CITY, RELATING IN ANY MANNER TO THIS AGREEMENT, IN WHOLE OR IN PART, REGARDLESS OF CAUSE OR ANY CONCURRENT OR CONTRIBUTING FAULT OR NEGLIGENCE OF CITY. DEVELOPER IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS, AND CITY IS REQUIRED TO REASONABLY COOPERATE AND ASSIST DEVELOPER IN PROVIDING SUCH DEFENSE; PROVIDED, HOWEVER, IF A COURT OF COMPETENT JURISDICTION SIGNS A JUDGMENT THAT BECOMES FINAL AND NON-APPEALABLE, DETERMINING THAT CITY (WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY) HAS JOINT, CONCURRENT OR SOLE NEGLIGENCE FOR THE CLAIMS, IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS (THE "JUDGMENT"), THEN DEVELOPER IS NOT REQUIRED TO INDEMNIFY OR DEFEND CITY TO THE EXTENT OF THE NEGLIGENCE APPORTIONED TO CITY FOR EACH CAUSE(S) OF ACTION IDENTIFIED IN THE JUDGMENT. IN THE EVENT THE JUDGMENT PROVIDES THAT CITY IS JOINTLY, CONCURRENTLY, OR SOLELY NEGLIGENT FOR THE CLAIMS REFERRED TO THEREIN, CITY AGREES TO REIMBURSE DEVELOPER FOR ALL REASONABLE AND NECESSARY COSTS INCURRED AND PAID BY DEVELOPER THAT ARE ATTRIBUTABLE TO CITY'S PERCENTAGE OF JOINT, CONCURRENT, OR SOLE NEGLIGENCE, AS SET FORTH IN THE JUDGMENT, INCLUDING REASONABLE AND NECESSARY ATTORNEY'S FEES AND EXPENSES, TO DEVELOPER WITHIN ONE HUNDRED TWENTY (120) DAY OF THE DATE OF THE JUDGMENT.

IN ITS SOLE DISCRETION, CITY SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY THE DEVELOPER IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY CITY, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY CITY IN WRITING. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH OBLIGATION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF DEVELOPER'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. DEVELOPER SHALL RETAIN CITY-APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF DEVELOPER FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND DEVELOPER SHALL BE LIABLE FOR ALL REASONABLE COSTS INCURRED BY CITY.

THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

13. ACKNOWLEDGEMENTS; WAIVER AND RELEASE OF CLAIMS.

a. DEVELOPER ACKNOWLEDGES AND AGREES THAT:

- (i) THE CONVEYANCES, DEDICATIONS, EASEMENTS AND/OR PAYMENT OF MONEY REQUIRED BY THIS AGREEMENT TO BE PERFORMED BY DEVELOPER, IN WHOLE OR IN PART, DO NOT CONSTITUTE A:
  - (A) TAKING UNDER THE TEXAS OR UNITED STATES CONSTITUTION;
  - (B) VIOLATION OF THE TEXAS WATER CODE, AS IT EXISTS OR MAY BE AMENDED;
  - (C) NUISANCE; AND/OR
  - (D) CLAIM FOR DAMAGES AND/OR REIMBURSEMENT AGAINST FRISCO FOR A VIOLATION OF ANY FEDERAL AND/OR STATE CONSTITUTION, STATUTE AND/OR CASE LAW AND/OR FEDERAL, STATE AND/OR LOCAL ORDINANCE, RULE AND/OR REGULATION.
- (ii) THE AMOUNT OF DEVELOPER'S FINANCIAL OR INFRASTRUCTURE CONTRIBUTION (AFTER RECEIVING ALL CONTRACTUAL OFFSETS, CREDITS AND REIMBURSEMENTS, IF ANY) AGREED TO IN THIS AGREEMENT IS ROUGHLY PROPORTIONAL TO THE DEMAND THAT SUCH DEVELOPER'S DEVELOPMENT PLACES ON FRISCO'S INFRASTRUCTURE.
- (iii) DEVELOPER HEREBY AGREES THAT ANY PROPERTY WHICH IT CONVEYS TO FRISCO PURSUANT TO THIS AGREEMENT IS ROUGHLY PROPORTIONAL TO THE BENEFIT RECEIVED BY



DEVELOPER FOR SUCH LAND, AND DEVELOPER HEREBY WAIVES ANY CLAIM THEREFORE THAT IT MAY HAVE. DEVELOPER FURTHER ACKNOWLEDGES AND AGREES THAT ALL PREREQUISITES TO SUCH A DETERMINATION OF ROUGH PROPORTIONALITY HAVE BEEN MET, AND THAT ANY VALUE RECEIVED BY FRISCO RELATIVE TO SAID CONVEYANCE ARE RELATED BOTH IN NATURE AND EXTEND TO THE IMPACT OF THE DEVELOPMENT OF DEVELOPER'S ADJACENT PROPERTY ON FRISCO'S INFRASTRUCTURE. DEVELOPER AND FRISCO FURTHER AGREE TO WAIVE AND RELEASE ALL CLAIMS ONE MAY HAVE AGAINST THE OTHER RELATED TO ANY AND ALL ROUGH PROPORTIONALITY AND INDIVIDUAL DETERMINATION REQUIREMENTS MANDATED BY THE UNITED STATES SUPREME COURT IN *DOLAN V. CITY OF TIGARD*, 512 U.S. 374 (1994), AND ITS PROGENY, AS WELL AS ANY OTHER REQUIREMENTS OF A NEXUS BETWEEN DEVELOPMENT CONDITIONS AND THE PROJECTED IMPACT OF THE PUBLIC INFRASTRUCTURE.

(iv) DEVELOPER SHALL INDEMNIFY AND HOLD HARMLESS FRISCO FROM ANY CLAIMS AND SUITS OF THIRD PARTIES, INCLUDING BUT NOT LIMITED TO DEVELOPERS' RESPECTIVE PARTNERS, OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNEES, VENDORS, GRANTEEES, AND/OR TRUSTEES, BROUGHT PURSUANT TO THIS PARAGRAPH.

b. DEVELOPER RELEASES FRISCO FROM ANY AND ALL CLAIMS OR CAUSES OF ACTION BASED ON EXCESSIVE OR ILLEGAL EXACTIONS.

c. DEVELOPER WAIVES ANY CLAIM FOR DAMAGES AND/OR REIMBURSEMENT AGAINST FRISCO FOR A VIOLATION OF ANY FEDERAL AND/OR STATE CONSTITUTION, STATUTE AND/OR CASE LAW AND/OR FEDERAL, STATE AND/OR LOCAL ORDINANCE, RULE AND/OR REGULATION.

d. THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

14. **Vested Rights/Chapter 245 Waiver.** The signatories hereto shall be subject to all ordinances of Frisco, whether now existing or in the future arising. This Agreement shall confer no vested rights on the Property, or any portion thereof, unless specifically enumerated herein. In addition, nothing contained in this Agreement shall constitute a "permit" as defined in Chapter 245, Texas Local Government Code, and nothing in this Agreement provides Frisco with fair notice of any Developer's project. **DEVELOPER WAIVES ANY STATUTORY CLAIM UNDER CHAPTER 245 OF THE TEXAS LOCAL GOVERNMENT CODE UNDER THIS AGREEMENT. THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

15. **Attorney's Fees.** In any legal proceeding brought to enforce the terms of this Agreement, including but not limited to, a proceeding brought pursuant to Paragraphs 5 and 11

above, the prevailing party may recover its reasonable and necessary attorney's fees from the non-prevailing party as permitted by Section 271.159 of the Texas Local Government Code, as it exists or may be amended.

16. **Developer's Warranties/Representations.** All warranties, representations and covenants made by Developer in this Agreement or in any certificate or other instrument delivered by Developer to Frisco under this Agreement shall be considered to have been relied upon by Frisco and will survive the satisfaction of any fees or obligations under this Agreement, regardless of any investigation made by Frisco or on Frisco's behalf.

17. **Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties hereto.

18. **Venue.** This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Collin County, Texas.

19. **Consideration.** This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

20. **Counterparts.** This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile signature will also be deemed to constitute an original if properly executed.

21. **Authority to Execute.** The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

22. **Savings/Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

23. **Representations.** Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.

24. **No Third Party Beneficiaries.** Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.

25. **Assignment/Binding Effect.** This Agreement is assignable upon the following conditions:

- a. the assignment of the Agreement must be evidenced by a recordable document. The recordable document referred to in this paragraph is subject to the reasonable approval of Frisco. Reasonable approval of Frisco shall be limited to Frisco's review and determination that the Developer's description of this Agreement and the obligations described herein are adequately explained in the recordable document and that the assignee's execution of the recordable document qualifies as a full acceptance and willingness to be bound by the obligations, covenants, and/or conditions contained in this Agreement;
- b. at the time of assignment, Developer must give the assignee written notice that any and all obligations, covenants and/or conditions contained in the Agreement will be assumed solely and completely by the assignee;
- c. Developer will file any approved, executed assignments in the Land Records of Collin County, Texas; and
- d. Developer shall provide Frisco with the name, address, phone number, fax number and the name of a contact person for the assignee.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective officers, directors, partners, employees, representatives, agents, vendors, grantees, and/or trustees, heirs, executors, administrators, legal representatives, successors and assigns, as authorized herein.

26. **Indemnification.** The parties agree that the Indemnity provisions set forth in Paragraphs 12 herein are conspicuous, and the parties have read and understood the same.

27. **Conveyances.** All conveyances required herein shall be made in a form acceptable to Frisco and free and clear of any and all encumbrances.

28. **Waiver.** Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance.

29. **Reference to Developer.** When referring to "Developer" herein, this Agreement shall refer to and be binding upon Developer, and its officers, directors, partners, employees, representatives, contractors, agents, successors, assignees, vendors, grantees and/or trustees.

30. **Miscellaneous Drafting Provisions.** This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be

construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.

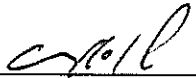
**IN WITNESS WHEREOF**, the parties have executed this Agreement and caused this Agreement to be effective on the latest date as reflected by the signatures below.

**The City of Frisco, Texas**  
A Municipal Corporation

By: \_\_\_\_\_  
George Purefoy, City Manager  
Date: \_\_\_\_\_

**Texas Univest – Frisco, Ltd.**  
A Texas Limited Partnership

By: **KFO, Inc.**  
**It's General Partner**

By: \_\_\_\_\_   
Allen Kohl, President  
Date: 10-22-08



**Exhibit “A”**

**“Property” Description  
(Approximately 9.9805 acres)**

**[Three (3) Pages Attached]**

**LEGAL DESCRIPTION**  
**(9.9805 ACRES)**

**BEING** a tract of land situated in the James Bolin Survey, Abstract Number 32, City of Frisco, Collin County, Texas, and being a part of a 1022.774 acre tract of land described in a deed to Texas Univest-Frisco, Ltd. recorded in Clerk's File number 93-0051249, Land Records, Collin, Texas, and being more particularly described as follows:

**BEGINNING** at a 5/8" iron rod with red cap marked KHA found for corner at the intersection of the west Right-of-Way line of Dallas North Tollway (300 foot wide Right-of-Way at this point) and the north Right-of-Way line of Stonebrook Parkway (variable width Right-of-Way) at the beginning of a curve to the right whose chord bears South 45°42'14" West a distance of 171.04 feet;

**THENCE** with the north Right-of-Way line of said Stonebrook Parkway the following calls:

In a southwesterly direction along said curve to the right having a radius of 935.00 feet, a central angle of 10°29'45", and an arc length of 171.28 feet to a 5/8" iron rod with red cap marked KHA found for corner;

South 45°20'36" West a distance of 100.00 feet to a 5/8" iron rod with red cap marked KHA found for corner at the beginning of a non-tangent curve to the right whose chord bears South 74°46'21" West a distance of 581.07 feet;

In a southwesterly direction along said non-tangent curve to the right having a radius of 950.00 feet, a central angle of 35°36'56", and an arc length of 590.53 feet to a 5/8" iron rod with red cap marked KHA found at the southeast corner of a tract of land described in a deed to Corporation of the Episcopal Diocese of Texas recorded in Volume 5003, Page 3124, Land Records, Collin, Texas;

**THENCE** North 02°34'15" East with the east line of said Corporation of the Episcopal Diocese of Texas a distance of 686.57 feet to a 5/8" iron rod found for corner in the southeast line of a tract of land described in a deed to Harvest Fund V, L.P. recorded in Volume 6013, Page 1070, Land Records, Collin, Texas;

**THENCE** North 62°54'06" East with the southeast line of said Harvest Fund V, L.P. a distance of 368.02 feet to a 5/8" iron rod with red cap marked KHA set for corner in the west Right-of-Way line of said Dallas North Tollway at the beginning of a non-tangent curve to the right whose chord bears South 37°45'03" East a distance of 646.49 feet;

**THENCE** in a southeasterly direction with the west Right-of-Way line of said Dallas North Tollway and along said non-tangent curve to the right having a radius of 2850.00 feet, a central angle of 13°01'29", and an arc length of 647.88 feet to the **POINT OF BEGINNING** and containing 9.9805 acres of land.

Bearing system based on the monuments found in the north line of a tract of land described in a deed to Restland of Dallas, Inc. recorded in Volume 5859, Page 1970, Land Records, Collin County, Texas.





**Exhibit "B"**  
**United States Corp of Engineers Nationwide Permit Number 9 for Project Number SWF-**  
**2007-45 under Permit Application Number 199800370**  
**"USCE Permit"**

**[Twelve (12) Pages Attached]**



DEPARTMENT OF THE ARMY  
FORT WORTH DISTRICT, CORPS OF ENGINEERS  
P. O. BOX 17300  
FORT WORTH, TEXAS 76102-0300

REPLY TO  
ATTENTION OF

May 25, 2007

Planning, Environmental, and Regulatory Division  
Regulatory Branch

SUBJECT: Project Number SWF-2007-45

Mr. Nicholas Laskowski  
Project Coordinator  
Berg Oliver Associates, Incorporated  
14701 Saint Mary's Lane, Suite 400  
Houston, Texas 77079

Dear Mr. Laskowski:

Thank you for your letter of April 4, 2007, transmitting the mitigation plan titled "MITIGATION PLAN, NATIONWIDE 39, SWF-2007-45, PROPOSED RETAIL CENTER, TEXAS UNIVEST-FRISCO, LTD, 9.9805 ACRE TRACT, COLLIN COUNTY, TEXAS". You submitted this mitigation plan to comply with special condition 1 of Texas Univest-Frisco, Limited authorization under nationwide permit 39 for Residential, Commercial, and Industrial Developments to construct a retail center on an approximately 9.9805-acre site located on the northwest corner of the intersection of the Dallas Parkway and Stonebrook Parkway in the city of Frisco, Collin County, Texas. As you know this project has been assigned Project Number SWF-2007-45. Please continue to include this number in all future correspondence concerning this project. Failure to reference the project number may result in a delay.

We have reviewed and hereby approve your mitigation plan. You are now authorized to conduct the above-referenced project within the Department of the Army permit area providing you continue to ensure that the work complies with all terms and conditions of the permit with the following modifications:

1. Revise special condition 1 to read as follows:

1. The permittee shall implement and abide by the mitigation plan titled "MITIGATION PLAN, NATIONWIDE 39, SWF-2007-45, PROPOSED RETAIL CENTER, TEXAS UNIVEST-FRISCO, LTD, 9.9805 ACRE TRACT, COLLIN COUNTY, TEXAS" by Berg Oliver Associates, dated March 2007, revised April 4, 2007 except where changes are necessary to comply with special conditions listed below. The permittee shall implement the mitigation plan concurrently with the construction of the project and complete the initial construction and plantings associated with the mitigation work prior to completion of

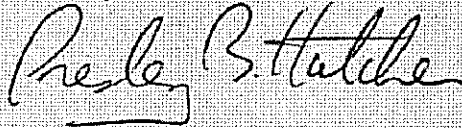
construction of the project. Completion of all elements of this mitigation plan is a requirement of this permit.

2. Add special condition 2 to read as follows:

2. The permittee shall debit 0.1 credit from the Trinity River Mitigation Bank in compliance with the provisions of the "Mitigation Banking Instrument Agreement, Trinity River Mitigation Bank, Ltd., Tarrant County, Texas, Permit Application No.: 199800370," dated February 2001, revised August 2002. This debit shall compensate off-site for unavoidable adverse project impacts that would not be compensated for by on-site mitigation. The permittee shall complete the mitigation bank transaction and provide documentation to the USACE that the transaction has occurred prior to commencing any ground-disturbing activity within waters of the United States.

Thank you for your interest in our nation's water resources. If you have any questions concerning this permit or our regulatory program, please contact Ms. Jennifer Knowles at the address above or telephone (817)886-1863.

Sincerely,

A handwritten signature in cursive script, appearing to read "Wayne A. Lea".

Wayne A. Lea  
Chief, Regulatory Branch

**MITIGATION PLAN  
TEXAS UNIVEST – FRISCO, L.T.D.  
SWG-2007-45**

**PURPOSE:**

The Applicant (Texas Univest – Frisco, L.T.D.) has applied for a Nationwide 39 Permit to impact (fill) 0.14-acres (approximately 900 linear feet) of jurisdictional ephemeral streambed to develop a 9.9805-acre tract into a Retail Center. The subject tract is located at the northwest corner of the Dallas Parkway and Stonebrook Parkway intersection in west Collin County, Texas.

**MITIGATION PLAN:**

The applicant has proposed to purchase 0.14-acres (1:1 ratio) of streambed credits from the Trinity River Wetland Mitigation Bank (Wetland Partners, Inc.) to offset the proposed impact of 0.14-acres of ephemeral stream. As of March 7, 2007 the Trinity River Wetland Mitigation Bank has the streambed credits necessary to fulfill the proposed mitigation plan.

**GOALS AND OBJECTIVES OF THE MITIGATION PLAN:**

The goal of the proposed mitigation plan is to 1) off-set the hydrologic function of the streambed by installing sub-surface drainage and storage; 2) and mitigate ecological value off-site by purchasing streambed credits from the Trinity River Wetland Mitigation Bank in a ratio of 1:1.

Since the existing ephemeral streambed on the subject tract only has flowing water during storm events it functions as a conduit for water transport. Therefore, the applicant has designed a sub-surface culvert system that will transport storm water from Stonebrook Parkway (through a 66" culvert pipe) to the discharge area at the northern property line. Additionally, the applicant is installing underground detention to hold water during high flow storm events.

Ecological function value of the proposed impact will be provided by purchasing streambed credits in the ratio of 1:1 from the Trinity River Wetland Mitigation Bank where they can have more ecological function when combined with other preserved areas.

**AVOIDANCE AND MINIMIZATION**

The applicant has considered numerous plans that involved the avoidance and minimization of impact to jurisdictional areas on the project site and found that both avoidance and minimization of impact to jurisdictional areas not only impracticable but financially unfeasible.

**AVOIDANCE & MINIMIZATION**

The subject tract was reviewed with total avoidance in mind however, because the ephemeral streambed bisects the tract north to south it would create serious complications with engineering and would require the installation of retaining walls and bridges to avoid the streambed. The cost of this scenario was

Texas Univest – Frisco, L.T.D.

SWF-2007-45

4/4/2007

2

prohibitive. The site is zoned commercial by the City of Frisco. A 10-acre commercial site requires 100,000 square feet of retail space to be financially feasible in addition to the required parking area.

#### **DISCUSSION OF ALTERNATIVES:**

##### **NO BUILD ALTERNATIVE**

The highest and best use of the tract is retail.

A no-build, no-jurisdictional impact, alternative was analyzed and eliminated because it did not meet the goal of the project.

##### **ALTERNATIVE #1**

An alternative that involved impacting (straightening) the existing streambed into a linear feature and integrating the feature into the proposed development was analyzed and eliminated for the following reasons; (1) design and construction of the retention walls and bridges was cost prohibitive, (2) required above-ground detention thereby eliminating usable land for the project, and (4) the ecological function of the existing stream bed would be lost and would require off-site compensation.

##### **PREFERRED ALTERNATIVE**

The preferred alternative involves the installation of a 66 inch reinforced concrete pipe (RCP) to carry storm water from Stonebrook Parkway to the discharge point at the northern property boundary. To aid in additional detention, as required by the City of Frisco, the Applicant will install numerous 60 inch reinforced plastic culvert pipes or equivalent throughout the tract to act as sub-surface detention. This preferred alternative meets project goals, the City of Frisco requirements for parking, detention, and retains the function of the streambed.

#### **FUNCTIONAL VALUE ASSESSMENT OF EXISTING AREAS**

The ephemeral streambed located on the project site under normal conditions (non-storm events) is a dry streambed with a limestone bottom averaging 3 feet wide and 6 inches deep. During storm events the ephemeral stream conveys water from the southern property boundary to the north. A riparian corridor consisting of *Ulmus crassifolia* (cedar elm), *Smilax rotundifolia* (roundleaf greenbrier), *Toxicodendron radicans* (poison ivy), *Elymus Canadensis* (Canada wild rye), and *Ambrosia artemisiifolia* (giant ragweed) runs along either side of the stream. The upstream (southern property boundary) most portion of the streambed is completely void of a riparian corridor and contains only an herbaceous layer consisting of *Rumex crispus* (curly dock) and *Ambrosia artemisiifolia* (giant ragweed). Development of the subject tract will inevitably remove the ecological value. To mitigate for the loss of these values the applicant is proposing to purchase mitigation credits in the ratio of 1:1 at the Trinity River Wetland Mitigation Bank.

#### **EVALUATION OF AREAS ON-SITE AND NEAR-SITE FOR MITIGATION**

##### **ON-SITE**

The Applicant has analyzed the possibility of the creation of mitigation on-site. This option was eliminated because the creation of mitigation on the site of the



retail center did not meet the goals and Frisco requirements for a retail center development.

#### **NEAR-SITE**

The Applicant has analyzed the possibility of creation and or enhancement of streambeds near the project site and has eliminated the option because; (1) the surrounding areas near the project site have been developed, (2) those that have yet to be developed are cost prohibitive to purchase for mitigation purposes, and (3) those areas with existing streambeds are owned by other persons/entities are unwilling to allow for streambed enhancement on their tracts.

#### **STREAMBED CONTRIBUTION TO WATERSHED**

The subject tract contains one (1) water of the U.S., an ephemeral stream, a tributary to Stewart Creek. By definition an ephemeral stream only conveys water during storm events. The streambed on the subject tract simple function is water conveyance. As it contains no special aquatic sites (wetlands, ripple pools, etc.) and it provides little water quality function and low habitat value.

The streambed conveys the water from upstream the south property line to the northern boundary of the subject tract where enters into a roadside ditch of the toll way. From a Trinity River Watershed perspective this ephemeral stream acts as a minor tributary that gathers water from the immediate project site. Furthermore the segment of the streambed proposed to be impacted is less than 1,000 feet from the origin of this tributary feature.

#### **COMPENSATORY MITIGATION BANK**

The Trinity River Mitigation Bank has numerous acres of wetland and streambed credits (please see the attached Trinity River Wetland Mitigation Banking Instrument). A mitigation bank is an excellent option for ecological function mitigation when both on-site and near-site mitigation options are not viable such as in this case. The Trinity River Mitigation Bank is an established approved bank for purchasing credits for proposed jurisdictional impacts in wetlands and streambeds. These banks have the added benefit of covering many acres and integrate the functions of many wetland and streambed areas into one unit which has been shown to be a more effective habitat than the piece meal mitigation areas scattered throughout the watershed.

The proposed site development plan has self-mitigated for the conveyance of water by proposing the installation of a 66" RCP from Stonebrook Parkway to the Northern property boundary. The mitigation of the ecological function is proposed to occur at the mitigation bank. This ecological mitigation will include the loss of habitat function from the adjacent riparian corridor and the streambed itself.

#### **PROPOSED MITIGATION COMPENSATORY RATIOS**

Due to the low ecological value of the ephemeral stream and the proposed self-mitigation of the water conveyance function on-site the Applicant has proposed a ratio of 1:1 to compensate for proposed impacts to waters of the U.S. This means the Applicant agrees to purchase 0.14-acres of streambed credits from

the Trinity River Wetland Mitigation Bank (Wetland Partners, Inc.) to compensate for the loss of ecological function.

**PROOF OF MITIGATION CREDIT PURCHASE**

The Applicant is proposing to purchase the 0.14-acres of streambed credits from the Trinity River Mitigation Bank (Wetland Partners, Inc.) prior to initiating construction on the project site. Copies of the Applicant's check and proof of the transaction from the Trinity River Mitigation Bank will be submitted to the United States Army Corps of Engineers Fort Worth District prior to construction.



5956 Sherry Ln., Suite 1810  
Dallas, Texas 75225  
whall@wetlandpartners.com



Telephone (214) 891-0920  
Fax (214) 891-9855  
Toll Free (877) 856-6663

TRINITY RIVER MITIGATION BANK

Wallace L. Hall, Jr.  
PRESIDENT

18 June 2007

Mr. Presley Hatcher  
Regulatory Branch (CESWF-PER-R)  
Fort Worth District  
U.S. Army Corps of Engineers  
P.O. Box 17300  
Fort Worth, Texas 76102-0300

Dear Presley,

Per our Mitigation Banking Instrument, permit application #199800370, we are required to report all credit sales within thirty (30) days of the transaction. This letter serves as notice that a sale was concluded on June 14, 2007 between the Trinity River Mitigation Bank and Texas Univest-Frisco, Ltd. (project number SWF-2007-45).

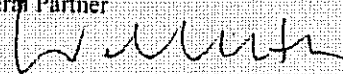
The number of credits purchased by the buyer was OneTenth of One (0.1) Credit from the account that qualifies for "any USACE-authorized impact to waters of the United States" (section 8.0 B. paragraph 3. of the MBI).

Additional information, of the purchaser and relevant USACE permit information, has been recorded in the ledger as required under the MBI (section 11.0 A). Thank you for your time in this matter.

Sincerely,

Wetland Partners, L.P.  
A Texas limited partnership

By: WF Investments, Inc.  
Its: General Partner

By:   
Wallace L. Hall, Jr.  
Its: President

## CREDIT SALES AGREEMENT

This Credit Sales Agreement (the "Agreement") is entered into by and between Trinity River Mitigation Bank, L.P., a Texas limited partnership ("TRMB"), and Texas Univest-Frisco, Ltd., a Texas limited partnership (the "Purchaser").

### RECITALS:

A. Pursuant to that certain Mitigation Banking Instrument Agreement dated April, 2001 (the "MBI") between, among others, Wetland Partners, L.P., a Texas limited partnership ("Wetland Partners"), as the sponsor, West Fork Partners, L.P., a Texas limited partnership ("West Fork") and the U.S. Army Corp of Engineers ("USACE"), Wetland Partners, as Sponsor of the Bank, and West Fork established the Trinity River Mitigation Bank under Permit Number 199800370 (the "Bank").

B. TRMB is the successor in interest to West Fork's rights under the MBI, although West Fork remains the owner of the surface of real property subject to the MBI.

C. Pursuant to the terms of the MBI, TRMB and Wetland Partners, as Sponsor of the Bank, intend to develop, restore, enhance, create and preserve wetlands, open water and riparian habitat on certain real property described in the MBI in exchange for mitigation bank credits authorized by USACE (the "Credits").

D. The Purchaser is developing certain real property, and in conjunction with such development, USACE has required that the Purchaser provide off-site wetland mitigation to compensate for impacts to USACE jurisdictional wetlands.

E. The Purchaser desires to purchase One-Tenth of One (0.1) Credit to satisfy the Purchaser's mitigation obligation.

### AGREEMENT:

NOW, THEREFORE, for good and valuable consideration described in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the Purchaser and TRMB agree as follows:

1. Sale of the Credits. TRMB hereby agrees to sell and assign, and does hereby sell, assign, transfer and convey to the Purchaser, and the Purchaser hereby agrees to purchase and accept, and does hereby purchase, accept, acquire and receive from TRMB, One-Tenth of One (0.1) Credit.

2. Payment for Credits. In consideration of the delivery of the Credits, the Purchaser agrees to pay to TRMB the sum of Twenty Five Thousand Dollars and No/100 (\$25,000) per Credit purchased, or Five Thousand Dollars and No/100 (\$5,000) for all of the Credits purchased pursuant to this Agreement.

3. Representations.

(a) Representations of TRMB. TRMB represents to the Purchaser the following:

- (i) TRMB is a Texas limited partnership, duly formed and validly existing;
- (ii) the Credits are free and clear of all liens, pledges, security interests or other encumbrances other than those imposed by the MBI;
- (iii) TRMB has duly taken all action necessary to authorize its execution and delivery of this Agreement and to authorize the consummation and performance of the transactions contemplated by this Agreement; and
- (iv) this Agreement, and all other agreements executed in connection with this Agreement, are the legal, valid and binding obligations of TRMB, enforceable in accordance with their terms except as such enforcement may be limited by bankruptcy, insolvency or similar laws of general application relating to the enforcement of creditors' rights.
- (v) The Bank is operated, and will continue to be operated, in accordance with all applicable USACE laws, regulations, orders, permit requirements, agreements and guidance, including, without limitation, the MBI and Permit Number 199800370.

Other than as expressly set forth above, TRMB does not make any representations or warranties to Purchaser, including, without limitation, the suitability of the Credits or whether or not the Credits will satisfy, in whole or part, any mitigation obligation of the Purchaser.

(b) Representations of Purchaser. The Purchaser represents to TRMB the following:

- (i) the Purchaser is a Texas limited partnership, duly formed and validly existing;
- (ii) the Purchaser has duly taken all action necessary to authorize its execution and delivery of this Agreement and to authorize the consummation and performance of the transactions contemplated by this Agreement; and
- (iii) this Agreement, and all other agreements executed in connection with this Agreement, are the legal, valid and binding obligations of the Purchaser, enforceable in accordance with their terms except as such enforcement may be limited by bankruptcy, insolvency or similar laws of general application relating to the enforcement of creditors' rights.

Other than as expressly set forth above, Purchaser does not make any representations or warranties to TRMB.

4. **Confidentiality.** The Purchaser shall keep absolutely confidential the existence of this Agreement, its terms, and all information regarding the MBI, TRMB, the Credits and the Bank that the Purchaser learned, was provided or was otherwise disclosed to Purchaser in connection with the negotiation, execution and consummation of this Agreement, except for the disclosure of those items that are already in the public domain, where disclosure is otherwise required by law, or the disclosure is approved by TRMB in writing.

5. **Notices.** Notices or other communications under this Agreement by either party to the other shall be given or delivered sufficiently if they are in writing and are delivered personally, or are dispatched by registered or certified mail, postage pre-paid, or facsimile, addressed or delivered to the other party as set forth on the signature pages to this Agreement.

6. **Binding Agreement; Assignment.** This Agreement, and its benefits and obligations, shall inure to and bind the respective heirs, executors, administrators, successors and assigns of the parties hereto. This Agreement may not be assigned by TRMB or the Purchaser without the written consent of the other.

7. **Restriction on Recordation.** Neither this Agreement nor any notice, memorandum nor notation thereof shall be recorded or disclosed by TRMB or the Purchaser in any public records or in any document made public.

8. **Attorney's Fees.** If there is a dispute between the Purchaser and TRMB under this Agreement, the prevailing party shall be entitled to recover all costs incurred, including reasonable attorney's fees, paralegal's fees and appellate and post-judgment proceedings and all costs thereof.

9. **Final Agreement.** This Agreement embodies the whole agreement of the Purchaser and TRMB. This Agreement shall supersede all previous communications, discussions, representations, advertisements, proposals or agreements either verbal or written, between the Purchaser and TRMB not otherwise contained in this Agreement.

10. **Captions.** The captions in this Agreement are included for convenience only and shall be given no legal effect whatsoever.

11. **Modification.** This Agreement may not be modified except by written instrument executed by both the Purchaser and TRMB.

12. **Choice of Laws; Venue.** This Agreement shall be governed by the laws of the State of Texas, and the venue for all disputes with respect to this Agreement shall be in Dallas, Dallas County, Texas.



13. **Partial Invalidity.** Should any part of this Agreement be rendered void, invalid or unenforceable by any court of law for any reason, such a determination shall not render void, invalid or unenforceable any other part of this Agreement, provided, however, that the parties receive the full consideration bargained for hereunder.

14. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall constitute an original, and all of which shall constitute one and the same agreement.

*[the remainder of this page intentionally left blank]*

IN WITNESS WHEREOF, the Purchaser and TRMB have executed this Agreement effective for all purposes as of the 14 day of June, 2007

**TRMB:**

TRINITY RIVER  
MITIGATION BANK, L.P.  
a Texas limited partnership

By: Weiland Partners, L.P.  
Its: General Partner

By: WF Investments, Inc.  
Its: General Partner

By:   
Wallace L. Hall, Jr.  
Its: President

Address: 5956 Sherry Lane, Suite 1810  
Dallas, Texas 75225

Telephone: 214/891-0920

Facsimile: 214/891-9855

**THE PURCHASER:**

Texas Univest-Frisco, Ltd.  
a Texas limited partnership

By: Regem Properties, Inc.  
Its: General Partner

By:   
Authorized Officer

Address: 11990 San Vicente Blvd.  
Suite 200  
Los Angeles, CA 90049

Telephone: 310 - 276-7300

Facsimile: 310/806-9801

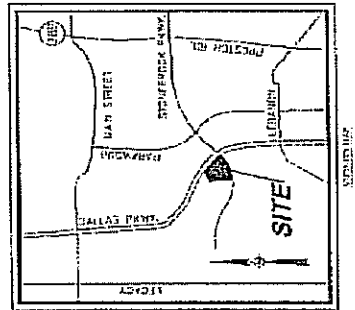
**Exhibit “C”**

**Preliminary Grading Plan  
[Seven (7) Pages Attached]**

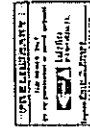
# CIVIL PLANS FOR UNIVEST TRACT MASS GRADING AND TEMPORARY DRAINAGE DITCH NORTHWEST CORNER OF STONEBROOK PARKWAY AND THE DALLAS NORTH TOLLWAY FRISCO, TEXAS

## PLANS SUBMITTAL/REVIEW LOG

DATE	REVISION
10/16/08	1
10/16/08	2



SHEET NO.	DESCRIPTION	DATE	REVISION
1-1	UNIVERSITY	10/16/08	1
1-2	TEMPORARY DRAINAGE	10/16/08	1
1-3	MASS GRADING	10/16/08	1
1-4	TEMPORARY DRAINAGE	10/16/08	1
1-5	MASS GRADING	10/16/08	1
1-6	TEMPORARY DRAINAGE	10/16/08	1
1-7	MASS GRADING	10/16/08	1
1-8	TEMPORARY DRAINAGE	10/16/08	1
1-9	MASS GRADING	10/16/08	1
1-10	TEMPORARY DRAINAGE	10/16/08	1



**DEVELOPER**  
UNIVEST TRACT  
12345 DALLAS, TX 75001  
10/16/08

**ENGINEER**  
John Doe  
12345 DALLAS, TX 75001  
10/16/08

OCTOBER 16, 2008

**STOP**  
**CALL BEFORE YOU DIG**  
800-4-A-DAVE  
1-800-4-A-DAVE

C-01







<div style="text-align: right;">   <b>Kierley-Horn and Associates, Inc.</b>          11111 Highway 100          Suite 100          Houston, Texas 77055          Tel: (713) 861-1111          Fax: (713) 861-1112       </div>	<div style="text-align: center;"> <b>UNIVEST TRACT</b>  <b>MASS GRADING AND TERRAPLACE</b>  <b>FRISCO, TEXAS</b> </div>	<div style="text-align: center;"> <b>GENERAL NOTES</b> </div>	<div style="text-align: right;"> <b>C-03</b>          SHEET NO.       </div>
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p><b>NOTICE TO THE CONTRACTOR</b></p> <p>ALL UTILITIES SHOWN ON THIS PLAN ARE BASED ON THE RECORD DRAWINGS AND FIELD SURVEY. THE CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING THE LOCATION AND DEPTH OF ALL UTILITIES PRIOR TO CONSTRUCTION. ANY DAMAGE TO UTILITIES SHALL BE REPAIRED AT THE CONTRACTOR'S EXPENSE.</p> </div> <div style="width: 45%; text-align: center;"> <p><b>CALL BEFORE YOU DIG</b></p> <p>1-800-4-A-DIG</p> <p>OR</p> <p>800-4-A-DIG</p> </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="width: 45%;"> <p><b>NOTICE TO THE CONTRACTOR</b></p> <p>ALL UTILITIES SHOWN ON THIS PLAN ARE BASED ON THE RECORD DRAWINGS AND FIELD SURVEY. THE CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING THE LOCATION AND DEPTH OF ALL UTILITIES PRIOR TO CONSTRUCTION. ANY DAMAGE TO UTILITIES SHALL BE REPAIRED AT THE CONTRACTOR'S EXPENSE.</p> </div> <div style="width: 45%; text-align: center;"> <p><b>CALL BEFORE YOU DIG</b></p> <p>1-800-4-A-DIG</p> <p>OR</p> <p>800-4-A-DIG</p> </div> </div>			

EXHIBIT C, PAGE 4 of 7





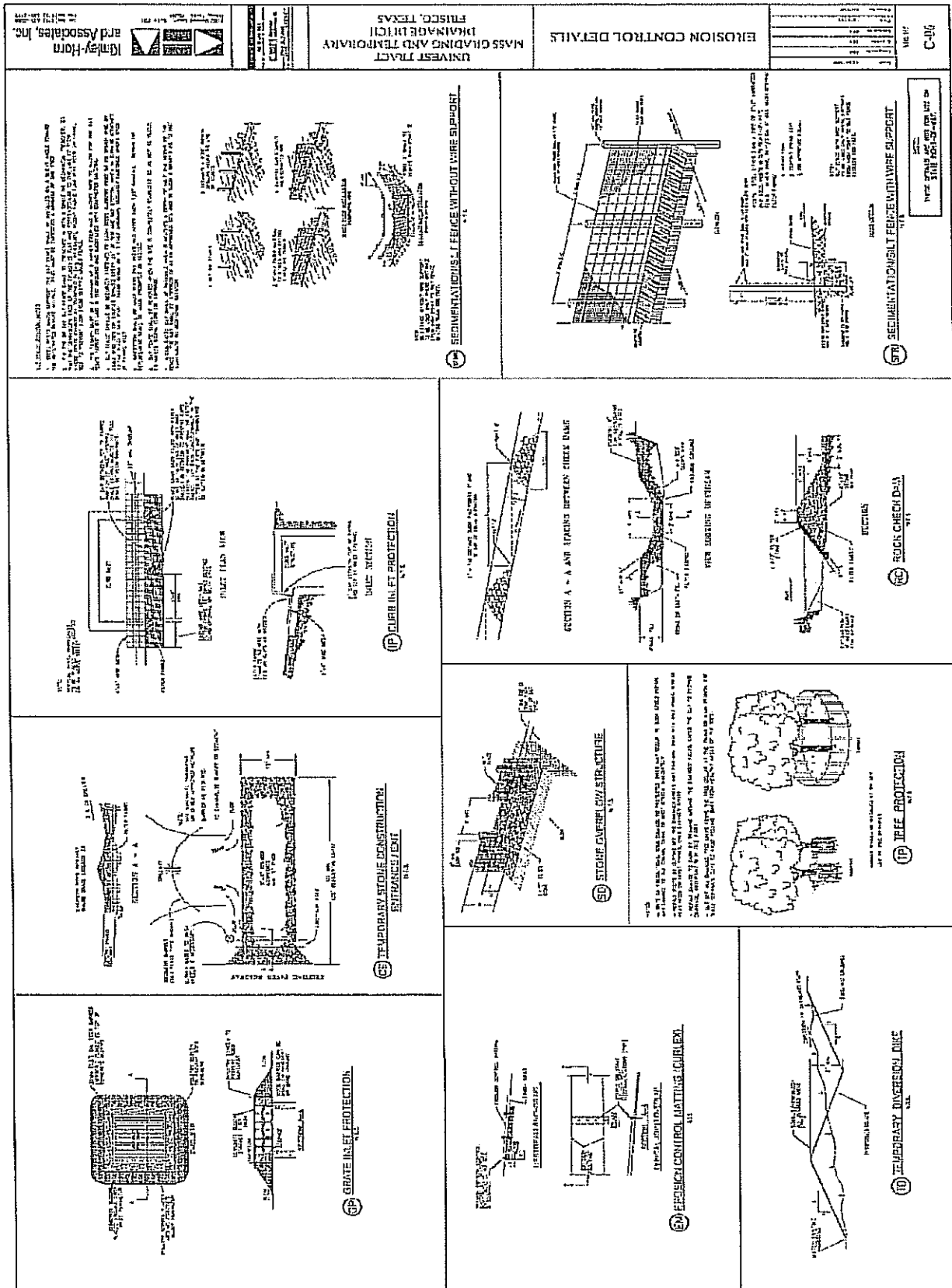


EXHIBIT C, PAGE 7 of 7